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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/530,891

04/11/2005

Francois Berthault

0540-1031

2249

466 7590 03/07/2008

YOUNG & THOMPSON
209 Madison Street
Suite 500
ALEXANDRIA, VA 22314

EXAMINER

LEUNG, PHILIP H

ART UNIT

PAPER NUMBER

3742

MAIL DATE

DELIVERY MODE

03/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/530,891	Applicant(s) BERTHAULT, FRANCOIS	
	Examiner Philip H. Leung	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4-11-2005</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. The drawings filed on 4-11-2005 are acceptable.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4-6, 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims are not clear. In claim 4, the term “retractable face” has no clear antecedent basis in claim 1. Similarly, the term “the outside wall” in claim 5 lacks clear antecedent basis. In claim 6, the term “opening/closing means” has no function and has no structural relationship with other elements. In claim 10, the terms “these lateral walls” and “the inside walls of box” lack proper antecedent basis and structural relationship with other claimed elements. In regard to claim 11, the term “wither” at line 3 is not understood. Furthermore, should the term “sheep” at line 4 be “sheet” instead? Moreover, the term “preferably” at line 7 is vague and indefinite. Clarification and correction are required.

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Brandberg et al (US 4,038,425).

Brandberg shows a device for the display and cooking of corn kernels for making popcorn, characterized in that it comprises a container (10) with a base (13) that can store corn kernels and a compensating zone (12) that can take up at least two positions, one folded and the other unfolded (see Figures 1-10 and col. 3, line 20 – col. 6, line 26 for all the embodiments).

6. Claims 1, 7 and 8 are further rejected under 35 U.S.C. 102(b) as being anticipated by Suzuki (JP 7-291367).

Suzuki shows a device for the display and cooking of corn kernels for making popcorn, characterized in that it comprises a container (1) with a base (3) that can store corn kernels and a compensating zone (2) that can take up at least two positions, one folded and the other unfolded (see Figures 1-23 and the English abstract).

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being obvious over Brandberg et al (US 4,038,425) or Suzuki (JP 7-291367), in view of Mefford (US 2,791,367) (cited by the applicant).

As set forth above, Brandberg or Suzuki shows every feature except for the exact structure of the compensation zone. Mefford shows a container having a fixed portion 11 (which is equivalent to the claimed base) and a collapsible portion 12 formed of stiffening faces and retractable faces as claimed (see Figures 1-3 and col. 1, line 54 - col. 2, line 37). It would have been obvious to an ordinary skill in the art at the time of invention to modify Brandberg or Suzuki to use the collapsible structure of Mefford as the compensation zone having folding and unfolding positions as such is advantageous (see col. 1, lines 38-44). The exact structural arrangement would be an obvious matter of engineering variations of Mefford.

9. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being obvious over Brandberg et al (US 4,038,425) or Suzuki (JP 7-291367), in view of Watkins et al (US 5,097,107).

As set forth above, Brandberg or Suzuki shows every feature except for the details of the tub within the base. Watkins shows a microwave popcorn package having a base 16 with a tub 42 containing corn kernels. The tub 42 has similar claimed structure including layers 44-48 and cover 12 (see Figures 5 and 6 and col. 6, line 60 - col. 8, line 54). It would have been obvious to an ordinary skill in the art at the time of invention to modify Brandberg or Suzuki to use the dish structure as the tub for container corn kernels as such is advantageous.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip H. Leung whose telephone number is (571) 272-4782.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on (571)-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Philip H Leung/
Primary Examiner, Art Unit 3742

P.Leung/pl
2-28-2008